IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 6

INLAND WATERWAYS CORPORATION, UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, HARRY H. WOODRING, SECRETARY OF WAR, AND H. A. SMITH, GENERAL PURCHASING OFFICER AND CHIEF OF WASHINGTON OFFICE OF PANAMA CANAL, *Petitioners*,

v.

CARY A. HARDEE, RECEIVER OF COMMERCIAL NATIONAL BANK OF WASHINGTON, D. C., *Respondent*.

APPENDIX FOR THE RESPONDENT.

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APPENDIX FOR THE RESPONDENT.

PART A.

National Bank Acts.

U. S. C., Title 12, Sec. 24. Corporate powers of associations.

Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in

the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession from February 25, 1927, or from the date of its organization if organized after February 25, 1927, until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without

recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided,* That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on August 23, 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations issued under authority of Chapter 7 of this title, or issued by the Federal Home Loan Banks or the Home Owners' Loan Corporation, or obligations which are insured by the Federal Housing Administrator pursuant to Section 1713 of this title, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States: *Provided,* That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus.

The restrictions of this section as to dealing in investment securities shall take effect one year after June 16, 1933.

But no association shall transact any business except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the Comptroller of the Currency to commence the business of banking. (R. S., Sec. 5136; July 1, 1922, c. 257, Sec. 1, 42 Stat. 767; Feb. 25, 1927, c. 191, Sec. 2, 44 Stat. 1226; June 16, 1933, c. 89, Sec. 16, 48 Stat. 184; Aug. 23, 1935, c. 614, Sec. 308, 49 Stat. 709.)

U. S. C., Title 12, Sec. 90. Depositaries of public moneys and financial agents of Government.

All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided*, That the Secretary shall, on or before the 1st of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided*, That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections.

Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State. (R. S.

Sec. 5153; Mar. 3, 1901, c. 871, 31 Stat. 1448; Mar. 4, 1907, c. 2913, sec. 3, 34 Stat. 1290; Dec. 23, 1913, c. 6, Sec. 27, 38 Stat. 274; Aug. 4, 1914, c. 225, 38 Stat. 682; June 25, 1930, c. 604, 46 Stat. 809.)

U. S. C., Title 12, Sec. 91. Transfers by bank and other acts in contemplation of insolvency.

All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution, shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court. (R. S. Sec. 5242.)

U. S. C., Title 12, Sec. 194. Dividends on adjusted claims; distribution of assets.

From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held. (R. S. Sec. 5236.)

PART B.

Public Money Acts.

U. S. C., Title 5, Sec. 264.

Same; receipts and expenditures of public moneys. It shall be the duty of the Secretary of the Treasury annually to lay before Congress, on the first day of the regular session thereof, an accurate, combined statement of the receipts and expenditures during the last preceding fiscal year of all public moneys, including those of the Post Office Department, designating the amount of the receipts, whenever practicable, by ports, districts, and States, and the expenditures, by each separate head of appropriation. (July 31, 1894, c. 174, Sec. 15, 28 Stat. 210.)

U. S. C., Title 5, Sec. 380.

Revenues and collections. The postal revenues and all debts due the Post Office Department shall, when collected, be paid into the Treasury of the United States under the direction of the Postmaster General, and the Treasurer, Assistant Treasurer, or designated depository receiving such payment shall give the depositor a duplicate receipt therefor, to be retained by him in his office as a voucher, and shall forward the original to the Bureau of Accounts in the Post Office Department, to be placed to the credit of the depositor in audit of his accounts by the General Accounting Office. (R. S., Sec. 407; Jan. 22, 1894, c. 17, 28 Stat. 28; June 10, 1921, c. 18, Sec. 304, 42 Stat. 24.)

U. S. C., Title 18, Sec. 173.

(Criminal Code, Sec. 87.) Disbursing officers unlawfully using public money. Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan with or without interest, or deposit in any place or in any manner, except as authorized by law, any public money intrusted to him; or shall, for any purpose not prescribed by law, withdraw from the Treasurer or any assistant treasurer, or any authorized depositary, or transfer, or apply, any portion of the public money intrusted to him, shall be deemed guilty of an embezzlement of the money so converted, loaned, deposited,

withdrawn, transferred, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both. (R. S. Sec. 5488; Mar. 4, 1909, c. 321, Sec. 87, 35 Stat. 1105.)

U. S. C., Title 18, Sec. 174.

(Criminal Code, Sec. 88.) Failure of depositaries to safely keep public deposits. If the Treasurer of the United States or any assistant treasurer, or any public depositary, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other persons having money of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years. (R. S. Sec. 5489; Mar 4, 1909, c. 321, Sec. 88, 35 Stat. 1105.)

U. S. C., Title 18, Sec. 175.

(Criminal Code, Sec. 89.) Unlawful use of public moneys by custodians. Every officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys instrusted to him for safe-keeping, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years. (R. S. Sec. 5490; Mar. 4, 1909, c. 321, Sec. 89, 35 Stat. 1105.)

U. S. C., Title 18, Sec. 177.

(Criminal Code, Sec. 91.) Failure to deposit as required. Whoever, having money of the United States in his possession or under his control, shall fail to deposit it with the Treasurer, or some assistant treasurer, or some public depositary of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be fined in a sum equal to the amount of money embezzled and imprisoned not more than ten years. (R. S. Sec. 5492; Mar. 4, 1909, c. 321, Sec. 91, 35 Stat. 1105.)

U. S. C., Title 18, Sec. 178.

(Criminal Code, Sec. 92.) Persons affected. The provisions of Secs. 173 to 177 of this title shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same. (R. S. Sec. 5493; Mar. 4, 1909, c. 321, Sec. 92, 35 Stat. 1105.)

U. S. C., Title 18, Sec. 179.

(Criminal Code, Sec. 93.) Record evidence of embezzlement. Upon the trial of any indictment against any person for embezzling public money under any provision of sections 173 to 178 of this title, it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money. (R. S. Sec. 5494; Mar. 4, 1909, c. 321, Sec. 93, 35 Stat. 1105.)

U. S. C., Title 18, Sec. 180.

(Criminal Code, Sec. 94.) Prima facie evidence of embezzlement. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, prima facie evidence of such embezzlement. (R. S. 5495; Mar. 4, 1909, c. 321, Sec. 94, 35 Stat. 1106.)

U. S. C. Title 18, Sec. 181.

(Criminal Code, Sec. 95.) Evidence of conversion. If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the Treasury Department to be allowed in his favor any receipt or voucher from a creditor of the United States without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized

by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher. (R. S. Sec. 5496; Mar. 4, 1909, c. 321, Sec. 95, 35 Stat. 1106.)

U. S. C. Title 18, Sec. 182.

(Criminal Code, section 96.) Banker receiving unauthorized deposit of public money. Every banker, broker, or other person not an authorized depositary of public moneys, who shall knowingly receive from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not prescribed by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both.

U. S. C., Title 31, Sec. 147.

Treasurer; duties. The Treasurer shall receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned in the General Accounting Office, and not otherwise. He shall take receipts for all moneys paid by him, and shall give receipts for all moneys received by him; and all receipts for moneys received by him shall be indorsed upon warrants signed by the Secretary of the Treasury, without which warrant, so signed, no acknowledgment for money received into the public Treasury shall be valid. He shall render his accounts to the General Accounting Office quarterly, or oftener if required, and shall transmit a copy thereof, when settled, to the Secretary of the Treasury. He shall at all times submit to the Secretary of the Treasury and the General Accounting Office, or either of them, the inspection of the moneys in his hands. (R. S. Sec. 305; July 31, 1894, c. 174, Secs. 4, 11, 28 Stat. 205, 209; June 10, 1921, c. 18, Sec. 304, 42 Stat. 24.)

U. S. C., Title 31, Sec. 474.

Public moneys subject to draft of Treasurer. All public moneys paid into any depository shall be subject to the draft of the Treasurer of the United States, drawn agreeably to appropriations made by law. (R. S. Sec. 3593.)

U. S. C., Title 31, Sec. 476.

Transfer of duties of assistant treasurers to other officers, etc. The Secretary of the Treasury may, in his discretion, transfer any or all of the duties and functions performed or authorized to be performed prior to May 29, 1920, by assistant treasurers at Boston, New York, Philadelphia, Baltimore, New Orleans, Saint Louis, San Francisco, Cincinnati, and Chicago, or their offices, to the Treasurer of the United States or the mints or assay offices of the United States, under such rules and regulations as he may prescribe, or may utilize any of the Federal reserve banks acting as depositaries or fiscal agents of the United States, for the purpose of performing any or all of such duties and functions, notwithstanding the limitations of Secs. 391 and 392 of Title 12, or any other provisions of law. (May 29, 1920, c. 214, Sec. 1, 41 Stat. 655.)

R. S., Sec. 3617 (31 U. S. C., Sec. 484).

The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post Office Department.

R. S., Sec. 3618 (31 U. S. C., Sec. 487).

All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of Coast Guard cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers and soldiers of the Army or of the sale of condemned Navy cloth-

ing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property."

U. S. C., Title 31, Sec. 489.

Payment of expenses of sales from proceeds. From the proceeds of sales of old materials, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of "proceeds of Government property" or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the General Accounting Office, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be. (June 8, 1896, c. 373, Sec. 1, 29 Stat. 268; June 10, 1921, c. 18, Sec. 304, 42 Stat. 24.)

U. S. C., Title 31, Sec. 492.

Duty of disbursing officers. Except as otherwise provided by law it shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or with one of the depositaries of the United States mentioned in Section 476 of this title, and to draw for the same only as it may be required for payments to be made by him in pursuance of law and draw for the same only in favor of the persons to whom payment is made; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury. In places, however, where there is no treasurer or depositary, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depositary, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. (R. S. Sec. 3620; Feb. 27, 1877, c. 69, Sec. 1, 19 Stat. 249; May 29, 1920, c. 214, Sec. 1, 41 Stat. 654, 655.)

R. S., Sec. 3621 (31 U. S. C., Sec. 495).

Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, or some public depositary of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer or the public depositary shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: *Provided*, That postal revenues and debts due to the Post Office Department shall be paid into the Treasury in the manner required by law.

U. S. C., Title 31, Sec. 522.

Transfer of moneys from depositaries to Treasury. The Secretary of the Treasury may, except as provided in Sec. 523 of this title, transfer the moneys in the hands of any depositary of public moneys to the Treasury of the United States to the credit of the Treasurer; and he may transfer moneys in the hands of one depositary to any other depositary, as the safety of the public moneys and the convenience of the public service shall seem to him to require. (R. S. Sec. 3640.)

U. S. C., Title 31, Sec. 526.

Public moneys in Treasury and depositaries subject to draft of Treasurer. All moneys paid into the Treasury of the United States shall be subject to the draft of the Treasurer. And for the purpose of payments on the public account the Treasurer is authorized to draw upon any of the depositaries, as he may think most conducive to the public interest and to the convenience of the public creditors. Each depositary so drawn upon shall make returns to the Treasury and Post Office Departments of all moneys received and paid by him, at such times and in such forms as shall be directed by the Secretary of the Treasury or the Postmaster General. (R. S. Sec. 3644.)

U. S. C., Title 39, Sec. 736.

WHAT TO BE FUNDS. All money received for the sale of money orders, including all fees thereon, all money transferred from the postal revenues to the money-order funds, all money transferred or paid from the money-order funds to the service of the Post Office Department, and all money-order funds transferred from one postmaster to another, shall be deemed and taken to be money-order funds and money in the Treasury of the United States. And it shall be the duty of the Treasurer of the United States or depositary designated by the Secretary of the Treasury under Sec. 476 of Title 31 to open, at the request of the Postmaster General, an account of "money-order funds" deposited by postmasters to the credit of the Postmaster General, and of drafts against the amount so deposited, drawn by him and countersigned by the comptroller of the bureau of accounts in the Post Office Department. (R. S. Sec. 4045; June 10, 1921, c. 18, Sec. 304, 42 Stat. 24; May 29, 1920, c. 214, Sec. 1, 41 Stat. 655.)

PART C.

United States Postal Savings Act.

U. S. C., Title 39, Sec. 759.

DEPOSIT OF FUNDS IN BANKS; INTEREST; RESERVE; SECURITY; DEPOSITS WITH TREASURER OF BOARD OF TRUSTEES. Postal savings funds received under the provisions of this chapter shall be deposited in solvent banks, whether organized under national or State laws, and whether member banks or not of the Federal reserve system, being subject to national or State supervision and examination, and the sums deposited shall bear interest at the rate of not less than 2¼ per centum per annum, which rate shall be uniform throughout the United States and Territories thereof; but 5 per centum of such funds shall be withdrawn by the board of trustees and kept with the Treasurer of the United States, who shall be treasurer of the board of trustees, in lawful money as a reserve. The board of trustees shall take from such banks such security in public bonds or other securities, authorized by Act of Congress or supported by the taxing power, as the board may prescribe, approve,

and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand. The funds received at the postal savings depository offices in each city, town, village, and other locality shall be deposited in banks located therein (substantially in proportion to the capital and surplus of each such bank) willing to receive such deposits under the terms of this chapter and the regulations made by authority thereof. If one or more member banks of the Federal reserve system exists in the city, town, village, or locality where the postal savings deposits are made, such deposits shall be placed in such qualified member banks substantially in proportion to the capital and surplus of each such bank, but if such member banks fail to qualify to receive such deposits, then any other bank located therein may, as hereinbefore provided, qualify and receive the same. If no such member bank and no other qualified bank exists in any city, town, village, or locality, or if none where such deposits are made will receive such deposits on the terms prescribed, then such funds shall be deposited under the terms of this chapter in the bank most convenient to such locality. If no such bank in any State or Territory is willing to receive such deposits on the terms prescribed, then such funds shall be deposited with the treasurer of the board of trustees and shall be counted in making up the reserve of 5 per centum. Such funds may be withdrawn from the treasurer of said board of trustees, and all other postal savings funds, or any part of such funds, may be at any time withdrawn from the banks and savings depository offices for the repayment of postal savings depositors when required for that purpose. If at any time the postal savings deposits in any State or Territory shall exceed the amount which the qualified banks therein are willing to receive under the terms of this chapter, and such excess amount is not required to make up the reserve fund of 5 per centum hereinbefore provided for, the board of trustees may invest all or any part of such excess amount in bonds or other securities of the United States. When, in the judgment of the President, the general welfare and interests of the United States so require, the board of trustees may invest all or any part of the postal savings funds, except the reserve fund of 5 per centum herein provided for, in bonds or other securities of the United States. The board of trustees may in its discretion purchase from the holders

thereof bonds which have been or may be issued under the provisions of Section 760 of this title. Interest and profit accruing from the deposits or investment of postal savings funds shall be applied to the payment of interest due to postal savings depositors, as hereinbefore provided, and the excess thereof, if any, shall be covered into the Treasury of the United States as a part of the postal revenue. Postal savings funds in the treasury of said board shall be subject to disposition as provided in this chapter, and not otherwise. The board of trustees may at any time dispose of bonds held as postal savings investments and use the proceeds to meet withdrawals of deposits by depositors. The word "Territory" as used herein shall be held to include the District of Columbia, the Territory of Alaska, and Porto Rico, and the word "bank" shall be held to include savings banks and trust companies doing a banking business. (Aug. 24, 1912, c. 387, Sec. 1, 37 Stat. 512; May 18, 1916, c. 126, Sec. 2; 39 Stat. 159.)

PART D.

Statutes—Orders and Circulars Relating to Canal Zone.

Panama Canal Statutes.

Act of June 28, 1902, c. 1302, 32 Stat. 481:

> Sec. 2. That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal, of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to perpetually maintain and operate the Panama Railroad, if the ownership thereof, or a controlling interest therein, shall have been acquired by the United States, and also jurisdiction over said strip and the

ports at the ends thereof to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations.

* * * * * * *

SEC. 7. That to enable the President to construct the canal and works appurtenant thereto as provided in this Act, there is hereby created the Isthmian Canal Commission, the same to be composed of seven members, who shall be nominated and appointed by the President, by and with the advice and consent of the Senate, and who shall serve until the completion of said canal unless sooner removed by the President, and one of whom shall be named as the chairman of said Commission. * * *

Act of April 28, 1904, c. 1758, 33 Stat. 429:

SEC. 2. That until the expiration of the Fifty-eighth Congress, unless provision for the temporary government of the Canal Zone be sooner made by Congress, all the military, civil, and judicial powers as well as the power to make all rules and regulations necessary for the Government of the Canal Zone and all the rights, powers, and authority granted by the terms of said treaty to the United States shall be vested in such person or persons and shall be exercised in such manner as the President shall direct for the government of said Zone and maintaining and protecting the inhabitants thereof in the free enjoyment of their liberty, property, and religion.

WHITE HOUSE,
Washington, D. C., May 9, 1904.

SIR:

* * * * * * *

Inasmuch as it is impracticable for the President, with his other public duties, to give to the work of supervising the Commission's construction of the Canal and government of the zone the personal attention which seems proper and necessary, and inasmuch as the War Department is the de-

partment which has always supervised the construction of the great civil works for improving the rivers and harbors of the country and the extended military works of public defense, and as the said department has from time to time been charged with the supervision of the government of all the island possessions of the United States, and continues to supervise the government of the Philippine Islands, I direct that all the work of the Commission done by virtue of powers vested in me by the act of Congress approved June 28, 1902, in the digging, construction, and completion of the Canal, and all the governmental power in and over said canal zone and its appurtenant territory, which by virtue of the act of Congress approved April 28, 1904, and these instructions, shall be vested in said Isthmian Canal Commission, shall be carried on or exercised under your supervision and direction as Secretary of War.

Subject to the limitations of law and the conditions herein contained, the Isthmian Canal Commission are authorized and directed:

1. To make all needful rules and regulations for the government of the zone and for the correct administration of the military, civil, and judicial affairs of its possessions until the close of the Fifty-eighth Congress.

2. To establish a civil service for the government of the strip and construction of the Canal, appointments to which shall be secured as nearly as practicable by a merit system.

* * * * * * *

6. To make all needful rules and regulations respecting an economical and correct disbursement and an accounting for all funds that may be appropriated by Congress for the construction of the canal, its auxiliary works, and the government of the canal zone; and also to establish a proper and comprehensive system of bookkeeping, showing the state of the work, the expenditures by classes, and the amounts still available.

* * * * * * *

The commission may legislate on all rightful subjects of legislation not inconsistent with the laws and treaties of the United States so far as they apply to said zone and other places, and the said power shall include the enactment of the sanitary ordinances of a preventive or curative character to be enforced in the cities of Colon and Panama and

which are contemplated and authorized by Article 7 of said Canal Convention. Such legislative power shall also include the power to raise and appropriate revenues in said zone; and all taxes, judicial fines, customs duties, and other revenues levied and collected in said zone by or under the authority of said commission shall be retained, accounted for, and disbursed by said commission for its proper purposes. The members of said commission to the number of four or more shall constitute a legislative quorum, and all rules and regulations passed and enacted by said commission shall have set forth as a caption that they are enacted by the Isthmian Canal Commission "By authority of the President of the United States."

* * * * * * *

All laws, rules, and regulations of a governmental character enacted by the commission hereunder shall be submitted to you for your approval, and should your approval be withheld from any such law, rule, or regulation, then from that time the law, rule, or regulation shall thereafter have no force or effect.

* * * * * * *

The necessary expenses incurred by the commission in carrying on the government of the canal zone will be defrayed from the local revenues so far as the said revenues may be sufficient and the remainder will be met from the appropriation made by the fifth section of the act of Congress approved June 28, 1902. An estimate of the proposed expenditures and revenues for each year in carrying on the government of the zone will be submitted to Congress at the beginning of each annual session.

* * * * * * *

These instructions may be modified and supplemented as occasion shall arise.

Very respectfully,

THEODORE ROOSEVELT.

To

HON. WM. H. TAFT,
Secretary of War.

Order of June 24, 1904, from Secretary of War to the Chairman of the Isthmian Canal Commission:

"The Governor of the Canal Zone is directed to formulate a plan for a practical and efficient postal ser-

vice in said Canal Zone, and including such measures and provisions of the postal service of the United States as are not inapplicable to the conditions of law and fact existing in the Canal Zone, and to report said plan to the Chairman of the Isthmian Canal Commission for such action as the discretion of the Commission shall approve."

1. ACT NO. 8, ENACTED SEPTEMBER 2, 1904

* * * * * * *

By authority of the President of the United States, be it enacted by the Isthmian Canal Commission:

* * * * * * *

SEC. 9. There is hereby created and established the office of Treasurer of the Canal Zone. * * *

He shall receive, safely keep, and duly account for all moneys belonging to the Government of the Canal Zone, from whatever source derived. He shall take proper receipts for all moneys paid or disbursed and give proper receipts for all moneys received by him by virtue of his office.

* * * * * * *

SEC. 42. By Executive Order dated June 24, 1904, provision was made as follows:

> That a post office be established in each of the following named towns of the Canal Zone, to-wit: Cristobal, Gatun, Bohio, Gorgona, Bas Obispo, Empire, Culebra, La Boca, and Ancon. The post offices at Cristobal and Ancon shall be money-order offices.

The post office at Bas Obispo is discontinued, and post offices are hereby established at San Pablo and Matachin.

There is hereby created and established a postal service for the Canal Zone, Isthmus of Panama.

It shall be the duty of the Postal Service to administer the affairs of the post offices and the postal affairs of the Zone.

The Postal Service of the Canal Zone shall be conducted, regulated and controlled by such of the laws, rules, and regulations of the postal service of the United States as are not inapplicable to the conditions of law and fact exist-

ing in the Canal Zone, and the laws enacted and the rules and regulations adopted by the Isthmian Canal Commission.

* * * * * *

SEC. 44. All moneys collected or received by the Director of Posts by virtue of his office shall be deposited forthwith with the Treasurer of the Canal Zone, and a receipt in duplicate therefor issued by the Treasurer to the Director of Posts, who shall attach the original thereof to his monthly account. [Laws of the Canal Zone, Isthmus of Panama, 1906, p. 52 *et seq.*]

4. EXECUTIVE ORDER NO. 1409, PROMULGATED SEPTEMBER 8, 1911

ESTABLISHING THE POSTAL-SAVINGS SYSTEM IN THE CANAL ZONE

By virtue of the authority vested in me, I hereby establish the following Order for the Canal Zone:

SECTION 1. There is hereby established in the post-offices of the Canal Zone a postal-savings system, to be operated without the payment of interest on the deposits under such rules and regulations as may be now or hereafter adopted.

SEC. 2. There is hereby created a Board of Trustees for the control, supervision, and administration of the postal savings depository offices designated and established under the provisions of this Order, and of the funds received as deposits at such postal savings depository offices by virtue thereof. Said board shall consist of the Collector of Revenues of the Canal Zone, the Auditor of the Canal Zone Government, and the Treasurer of the Canal Zone, severally, acting *exofficio*, and shall have power to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices; the regulations above mentioned to be subject to the approval of the Chairman of the Isthmian Canal Commission.

* * * * * * *

SECTION 5. At least one dollar, or a larger amount in multiples thereof, must be deposited before an account is opened with a person depositing the same; and one dollar, or multiples thereof, may be deposited after such account has been opened. Postal savings deposits will be evidenced by postal savings certificates issued in fixed denominations

of $1, $2, $5, $10, $20, $50, $100, each bearing the name of the depositor, the number of his account, the date of issue, and the name of the depository office.

* * * * * *

SECTION 7. Postal-savings funds received under the provisions of this Order shall be deposited with the Treasurer of the Canal Zone under such regulations as the Board of Trustees may prescribe.

* * * * * *

SECTION 9. That the final judgment, order, or decree of any court of competent jurisdiction adjudicating any right or interest in the credit of any sum deposited by any person with the postal-savings depository, if the same shall not have been appealed from, and the time for appeal have expired, upon submission to the Collector of Revenues of a copy of the same, duly authenticated in the manner provided by the laws of the United States for the authentication of the records and judicial proceedings of the courts of any state or territory, or of any possession subject to the jurisdiction of the United States, when the same are proved or admitted within any other court within the United States, shall be accepted by the Board of Trustees as conclusive of the title, right, interest, or possession so adjudicated; and any payment of said sum in accordance with such order, judgment, or decree shall operate as a full and complete discharge of the United States and the Canal Zone Government from the claim or demand of any person or persons to the same.

* * * * * * *

WM. H. TAFT.

THE WHITE HOUSE,
September 8, 1911.

Act of August 24, 1912, c. 390, 37 Stat. 560:

SEC. 2. That all laws, orders, regulations, and ordinances adopted and promulgated in the Canal Zone by order of the President for the government and sanitation of the Canal Zone and the construction of the Panama Canal are hereby ratified and confirmed as valid and binding until Congress shall otherwise provide. The existing courts established in the Canal Zone

by Executive order are recognized and confirmed to continue in operation until the courts provided for in this Act shall be established. 48 U. S. Code 1309.

* * * * * * *

SEC. 4. That when in the judgment of the President the construction of the Panama Canal shall be sufficiently advanced toward completion to render the further services of the Isthmian Canal Commission unnecessary the President is authorized by Executive order to discontinue the Isthmian Canal Commission, which, together with the present organization, shall then cease to exist; and the President is authorized thereafter to complete, govern, and operate the Panama Canal and govern the Canal Zone, or cause them to be completed, governed, and operated, through a governor of the Panama Canal and such other persons as he may deem competent to discharge the various duties connected with the completion, care, maintenance, sanitation, operation, government, and protection of the canal and Canal Zone. If any of the persons appointed or employed as aforesaid shall be persons in the military or naval service of the United States, the amount of the official salary paid to any such person shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this Act. The governor of the Panama Canal shall be appointed by the President, by and with the advice and consent of the Senate, commissioned for a term of four years, and until his successor shall be appointed and qualified. He shall receive a salary of ten thousand dollars a year. All other persons necessary for the completion, care, management, maintenance, sanitation, government, operation, and protection of the Panama Canal and Canal Zone shall be appointed by the President, or by his authority, removable at his pleasure, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same, but salaries or compensation fixed hereunder by the President shall in no instance exceed by more than twenty-five per centum the salary or compensation paid for the same or similar services to persons employed

by the Government in continental United States. * * * 48 U. S. Code 1305.

* * * * * * *

SEC. 7. That the governor of the Panama Canal shall, in connection with the operation of such canal, have official control and jurisdiction over the Canal Zone and shall perform all duties in connection with the civil government of the Canal Zone, which is to be held, treated, and governed as an adjunct of such Panama Canal. Unless in this Act otherwise provided all existing laws of the Canal Zone referring to the civil governor or the civil administration of the Canal Zone shall be applicable to the governor of the Panama Canal, who shall perform all such executive and administrative duties required by existing law. * * * 48 U. S. Code 1307.

EXECUTIVE ORDER TO ESTABLISH A PERMANENT ORGANIZATION FOR THE PANAMA CANAL (PUBLISHED IN THE 660 SERIES OF GOVERNOR'S CIRCULARS IN RE GENERAL AND SEPARATE ORGANIZATIONS)

By virtue of the authority vested in me, I hereby enact the following order, creating a permanent organization for the Panama Canal, under the Act of Congress "To provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone," approved August 24, 1912 [Sec. 4, Panama Canal Act]

SECTION 1. The organization for the completion, maintenance, operation, government and sanitation of the Panama Canal and its adjuncts and the government of the Canal Zone shall consist of the following departments, offices and agencies, and such others as may be established by the Governor of the Panama Canal on the Isthmus or elsewhere with the approval of the President, all to be under the direction of the Governor, subject to the supervision of the Secretary of War.

* * * * * * *

ACCOUNTING DEPARTMENT

There shall be an Accounting Department under the supervision and direction of the Auditor, with an assistant in the United States [Sec. V, Executive Order of Mar. 2, 1914, p. 162, defines duties of Assistant Auditor in the United States]. The duties of the department shall include all general bookkeeping, auditing and accounting, both for money and property, costkeeping, the examination of payrolls and vouchers, the inspection of time books and of money and property accounts, the preparation of statistical data, and the administrative examination of such accounts as are required to be submitted to the United States Treasury Department; and the collection, custody and disbursement of funds for the Panama Canal and the Canal Zone. These same duties shall be performed for the Panama Railroad Company on the Isthmus when not inconsistent with the charter and by-laws of that Company. The department shall be charged with the handling of claims for compensation on account of personal injuries and of claims for damages to vessels. Within the limits fixed by law, the duties and financial responsibilities of the officers and employees charged with the receipt, custody, disbursement, auditing and accounting for funds and property shall be prescribed in regulations issued by the Governor, with the approval of the President. The Auditor shall maintain such a system of bookkeeping as will enable him to furnish at any time full, complete and correct information in regard to the status of appropriations made by Congress, the status of all other funds, and the amounts of net profits on all operations, which are to be covered into the Treasury as required by the Panama Canal Act.,

* * * * * *

SEC. 3. This order shall take effect from and after the 1st day of April, 1914, from which date the Isthmian Canal Commission, together with the present organization for the Panama Canal and the Canal Zone, shall cease to exist, in accordance with the terms of the above-mentioned Act of Congress.

WOODROW WILSON.

THE WHITE HOUSE,
January 27, 1914.

THE PANAMA CANAL

OFFICE OF THE GOVERNOR,
Culebra, C. Z., April 1, 1914.

Circular No. 660-2.

ACCOUNTING DEPARTMENT

AUDITOR OF THE PANAMA CANAL

1. The Auditor of The Panama Canal is charged with the immediate direction and control of accounting, and the auditing and settlement of claims for The Panama Canal and Canal Zone and for the Commissary Department of The Panama Railroad on the Isthmus. He has supervision and control over the acceptance of bonds, the methods of keeping records and accounts of receipts and disbursements of moneys received by all officers and agents of The Panama Canal and Canal Zone by virtue of their offices or positions, and the methods of safeguarding such moneys. He shall prescribe all forms for recording the receipt and disbursement of moneys and property and all forms necessary for use in accounting for money and property, except as otherwise prescribed in accordance with law. He is authorized, and it shall be his duty, to examine the books, contracts, records, and accounts of money and property in the possession of all officers and agents of The Panama Canal and Canal Zone, and of the Commissary Department of the Panama Railroad on the Isthmus. He shall perform all the duties heretofore assigned to the Examiner of Accounts or to the Auditor of the Canal Zone Government, and the additional duties prescribed by the Executive Order of January 27, 1914.

DISBURSEMENTS—PAYMASTER

2. The Paymaster is charged with the payment on the Isthmus of all moneys appropriated for The Panama Canal and expendable under the direction of the Governor. The Paymaster will make payments only on vouchers or pay rolls, time vouchers or pay receipts which have been examined and audited by the Auditor. All collections made by the Paymaster on the pay rolls shall be paid by him to the Collector upon the certificate of the Auditor specifying the amount and the source from which derived, except refund-

ments of overpayments and amounts due The Panama Railroad Company for supplies or services rendered employees, and except other deductions authorized to be made and to be paid to other branches of the service, to contractors or other persons. All other duties performed by the Disbursing Officer of the Isthmian Canal Commission prior to April 1, 1914, will be performed by the Collector.

RECEIPTS—COLLECTOR

3. The Collector shall perform all duties heretofore performed by the Treasurer of the Canal Zone and, in addition, shall collect or receive all amounts due The Panama Canal and Canal Zone. He shall transfer all cash received by him and not required for the performance of his duties, to the Paymaster. For the funds of The Panama Canal, he shall take the Paymaster's receipts; for Canal Zone, money order, postal savings bank, clubhouse, and other trust funds and security deposits, he shall take the draft of the Paymaster on the Treasurer of the United States and shall deposit same in depositories under the contracts entered into by the Secretary of War. He shall have such number of deputies or assistants as may be assigned to him. All moneys, records, and papers of the Treasurer of the Canal Zone, and all moneys, records, and papers of the Collector of Revenues and his deputies, insofar as they relate to the collection of moneys, shall be transferred to the Collector of The Panama Canal.

4. The Collector will render an account for all public moneys of the United States received by him to the Auditor for the War Department, through the Auditor of The Panama Canal. The account will be forwarded to the Auditor of The Panama Canal within ten days after the close of each month, and will be forwarded by the Auditor of The Panama Canal to the Auditor for the War Department within ten days thereafter.

5. All amounts due The Panama Canal or Canal Zone will be collected by the Collector or his deputies whenever practicable. Bonded employees of the various departments and divisions designated by the Auditor may make collections for minor services or sales. In the performance of their duties in connection with receiving, handling, and refunding cash, such employees shall be subject to the direction of the

Auditor. Such bonded employees shall issue receipts in triplicate, giving the original to the party making deposit and sending the duplicate to the Auditor.

* * * * * *

Act of August 21, 1916, c. 371, 39 Stat. 527, 528 (48 U. S. C., Secs. 1324, 1325):

SEC. 6. That deposit money orders issued in the Canal Zone in lieu of postal savings certificates in accordance with the rules and regulations heretofore established by the President, or that may hereafter be established by him, shall bear interest at a rate not exceeding two per centum per annum.

SEC. 7. That the interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders authorized by the preceding section. Such interest shall also be available to pay any losses which are chargeable to the Canal Zone postal service.

BY VIRTUE OF THE AUTHORITY VESTED IN ME, I HEREBY ESTABLISH THE FOLLOWING ORDER FOR THE CANAL ZONE

SECTION 1. The Executive Order of September 8, 1911, establishing the Postal Savings System in the Canal Zone, is hereby repealed, PROVIDED THAT accounts, opened in accordance with that order, and the regulations established thereunder, shall continue as prescribed in said order and regulations until they are finally closed by the withdrawal of the deposits.

SECTION 2. For the accommodation of persons desiring to deposit their savings in the post offices of the Canal Zone, money orders may be issued in the Canal Zone payable to the purchaser at the office of issue, for which no fee shall be charged.

SECTION 3. This order shall take effect from and after October 1, 1914.

WOODROW WILSON.

THE WHITE HOUSE,
5 September 1914.

Act of February 16, 1933, c. 89, 47 Stat. 812 (48 U. S. C., Sec. 1323a):

SEC. 1. The postal service of the Canal Zone shall be governed by such of the laws, rules, and regulations of the Postal Service of the United States as are not inapplicable to the conditions existing in the Canal Zone, and the Governor of the Panama Canal is authorized to establish new post offices or discontinue those already established, to provide such rules and regulations as are necessary for the operation of the service, to appoint the personnel thereof, and to prescribe the postage stamps and other stamped paper which shall be used in such service: *Provided, however,* That the expenses of operating the Canal Zone postal service shall be defrayed, so far as possible, from the revenue derived therefrom, the use of which for that purpose is hereby authorized.

PART E.

Letters Relative to Opening of Canal Zone Deposits.

ISTHMIAN CANAL COMMISSION,

DEPARTMENT OF
EXAMINATION OF ACCOUNTS,

Empire, Canal Zone, September 19, 1908.

Lieut. Col. GEO. W. GOETHALS,
Chairman and Chief Engineer, Culebra, C. Z.

SIR: The appointment of a Treasurer of the Canal Zone and his entrance upon duty October 1, 1908, brings up the question of the safekeeping of the money of the Canal Zone Government now amounting to more than one million dollars. Since the beginning of the work in 1904 the Disbursing Officer of the Commission has acted as Treasurer of the Canal Zone and for some time past has kept the moneys of the United States and of the Canal Zone in one fund. In order to avoid keeping a total of more than two million dollars in cash in the office building at Empire, the present Disbursing Officer has used the Canal Zone moneys, as

occasion required, in payment of the obligations of the Commission. At the present time he has not a sufficient amount of cash on hand to pay over the money due the Canal Zone and at the same time meet the Commission's obligations. He has, however, a large balance to his credit as Disbursing Officer, with the Assistant Treasurer of the United States at New York. From this balance he can have shipped a sufficient amount of cash to pay over to the new Treasurer of the Canal Zone, the entire amount due, if it is found desirable to do so.

It being important that the moneys of the Canal Zone should be kept separate, such moneys now received by the Treasurer exceeding five million dollars a year, you determined that a Treasurer should be appointed. Mr. Homer A. A. Smith has executed the required bond and will enter upon the duties of the office October 1, 1908.

More than ninety percent of the moneys received by the Canal Zone Government are money-order funds. At this time money-order sales are made at the rate of five million dollars a year. Many employees on the Isthmus purchase money orders payable to themselves at the place of issue and hold them for many months; others purchase them payable to themselves at post offices in the United States. Under its arrangement with the United States Post Office Department the Canal Zone Government pays at the time of issue ninety percent of the face value of orders drawn on the United States. Thus ten percent of the amount of these orders is held until they have been paid by the United States Postal Service. This fund with the balance of the ninety percent always on hand pending the arrival of the time for regular remittance, constitutes a large fund. There is also a fund of about four hundred thousand dollars which represents the value of money orders issued in the Zone and payable in the Zone. This may be said to be the savings of employees who deposit them for safe-keeping.

The experience of the past year has shown that there is not less than seven hundred thousand dollars that is in the nature of a permanent fund, which will remain in the Treasury of the Canal Zone Government, in cash and will not be touched. I think it undesirable to keep this amount in the office building at Empire, if other arrangements can be made. In my opinion it is desirable that the Treasurer have a depository on the Isthmus for the purpose of issuing

checks in payment of accounts when it is found best to pay particular classes of accounts by check.

As the moneys of the Zone are not moneys of the United States, the laws regarding the designation of depositories of public moneys do not apply. The International Banking Corporation is not incorporated under the national banking law of the United States, but it has been used as a fiscal agency in connection with the financial transactions of the War Department in the Insular possessions of the United States. This corporation has branches in the Canal Zone, and for that reason I have the honor to suggest that the Honorable Secretary of War be requested to authorize the making of an agreement with the International Banking Corporation for the deposit with it of approximately seven hundred thousand dollars. I would also suggest, for your consideration, that as the War Department has had dealings with this bank and the main office of the bank is in New York City, it may be best that the negotiations be had between the War Department and the bank, rather than between the Commission on the Isthmus and the bank.

Without knowing anything of the attitude of the bank on the subject I beg to suggest the following brief outline of what I think is desirable from the standpoint of the Canal Zone:

1. The Canal Zone will place on deposit with the bank at New York, or with its branches on the Isthmus for the credit of the New York bank, as the bank may prefer, six hundred thousand dollars or more, subject to the check of the Treasurer of the Canal Zone. To this account the Treasurer would deposit checks on New York received by him from the Disbursing Officer of the Isthmian Canal Commission in exchange for cash and other checks and drafts payable in the United States. The Disbursing Officer pays out about one and one-half million dollars monthly in salaries and wages, and a considerable amount comes back to the Treasurer of the Canal Zone through the post offices. The Treasurer would draw on this account in New York as a rule only to make payments to the Postal Service of the United States. So far as can be foreseen, the balance of this account would for several years never be less than six hundred thousand dollars.

2. The bank should pay interest, at a rate agreed upon, on the average daily balance on deposit in New York, and

if desired by the bank, it would be practicable to give notice of say thirty days, if it be found necessary at some future time to so draw on the account as to reduce the balance below six hundred thousand dollars. The bank should render a monthly statement of deposits and payments, and credits to the Treasurer on Interest Account.

3. The Canal Zone will place on deposit with the bank on the Isthmus one hundred thousand dollars or more, subject to the check of the Treasurer of the Canal Zone, and checks to be payable at any of the branches of the bank on the Isthmus. It is intended that this fund on deposit shall include all moneys not deposited in or to the credit of the bank in New York and not needed by the Treasurer for current cash payments. This fund on deposit on the Isthmus should not bear interest but will not be less than one hundred thousand dollars at any time and would approximate two hundred thousand dollars at the present time.

4. The agreement should be for one year and be renewed from year to year with the option on the part of either the bank or Secretary of War to terminate the agreement on three months' notice; the agreement to be immediately terminated should Congress, by law, direct its termination, or give directions concerning Canal Zone funds inconsistent with it.

5. The bank should furnish security to the satisfaction of the Secretary of War, either in the form of a deposit of bonds or other marketable securities payable to the Treasurer of the Canal Zone, or by the guaranty of three or more surety companies to the satisfaction of the Secretary of War.

Respectfully,

W. W. WARWICK,
Examiner of Accounts.

ISTHMUS CANAL COMMISSION,

PURCHASING DEPARTMENT,

Washington, D. C., October 21st, 1908.

Honorable LUKE E. WRIGHT,
Secretary of War, Washington, D. C.

SIR: I have the honor to forward herewith a letter from Mr. W. W. Warwick, the Examiner of Accounts, relative to

the deposit of Canal Zone funds, which have been separated from the monies covered by Congressional appropriations, and are now in the custody of the Treasury of the Canal Zone.

As noted in Mr. Warwick's letter, the monies of the Zone are not monies of the United States, so that the laws regarding the designation of depositories of public monies do not apply. It is advisable, however, that the funds should not remain in the hands of the Treasurer and also desirable that so much of the monies as are not in constant use should, if possible, draw interest. It would be a matter of great convenience if the company to be made depository have a branch on the Isthmus, thereby eliminating all questions of exchange.

There are on the Isthmus four banks: a branch of the International Banking Company; Isaac Brandon and Brothers, Merchants and Bankers; Ehrman Brothers; and the Panama Banking Company. I forward herewith propositions for the care of these funds from both the International Banking Company and Isaac Brandon and Brothers. It is to be noted that the latter firm is just reorganizing, while the former is a long and well-established banking house. The Examiner of Accounts recommends that the International Banking Company be selected as the depository for the Canal Zone funds and if not inconsistent with public policies, I have the honor to recommend favorable consideration, the arrangements to be entered into with the International Banking Company being similar to those now existing between the War Department and this Company covering the deposit of Philippine funds.

Respectfully,

GEO. W. GOETHALS,
Chairman and Chief Engineer.

Enclosures 3.

PART F.

Merchant Marine Act of 1920—Sec. 14.

U. S. C., Title 46, Sec. 873.

Use and disposition of net proceeds derived from authorized activities; withdrawal of investments. The net proceeds derived by the board prior to July 1, 1921, from any activities authorized by this chapter, or by the preceding chapter, or by the acts specified in Section 862, except such an amount as the board shall deem necessary to withhold as operating capital, for the purposes of Section 871, and for the insurance fund authorized in Section 869, and for the construction loan fund authorized in Section 870, shall be covered into the Treasury of the United States to the credit of the board and may be expended by it, within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels. After July 1, 1921, such net proceeds, less such an amount as may be authorized annually by Congress to be withheld as operating capital, and less such sums as may be needed for such insurance and construction loan funds, shall be covered into the Treasury of the United States as miscellaneous receipts. The board shall, as rapidly as it deems advisable, withdraw investment of Government funds made during the emergency under the authority conferred by the Acts or parts of Acts repealed by Section 862 and cover the net proceeds thereof into the Treasury of the United States as miscellaneous receipts. (June 5, 1920, c. 250, Sec. 14, 41 Stat. 993.)

PART G.

Inland Waterways Corporation—Preamble.

INLAND WATERWAYS CORPORATION

Act of June 3, 1924, c. 243, 43 Stat. 360

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of carrying on the operations of the Government-owned inland, canal, and coastwise waterways system to the point where the system can be transferred to private operation to the best advantage of the

Government, of carrying out the mandates of Congress prescribed in section 201 of the Transportation Act, 1920, as amended, and of carrying out the policy enunciated by Congress in the first paragraph of section 500 of such Act, there is hereby created a corporation, in the District of Columbia, to be known as the Inland Waterways Corporation (hereinafter referred to as the "corporation"). The Secretary of War shall be deemed to be the incorporator, and the incorporation shall be held effected upon the enactment of this Act. The Secretary of War shall govern and direct the corporation in the exercise of the functions vested in it by this Act.

PART H.

Letters as to Status of Merchant Fleet Funds.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, June 16, 1931.

A-7515.
A-12887.

UNITED STATES SHIPPING BOARD:

GENTLEMEN: It has been the practice of the Merchant Fleet Corporation to maintain accounts in certain banks in the United States designated by the Corporation for the deposit of moneys derived from operation of vessels by the Managing Operators, good faith deposits, receipts from sales and miscellaneous collections.

The vessels and other property in custody of the Board constitute property of the United States, controlled through its agent, the Merchant Fleet Corporation, and moneys derived from the business operations of the Fleet Corporation are moneys of and for the use of the United States. Receipts of the Government go into the General Fund of the Treasury and are available for the general purposes of Government unless the Congress directs that they be set apart for a specific use in a special fund. The fact that the Congress has included the moneys received from operations and sale of property in the appropriation "United States Shipping Board" does not affect or alter their char-

acter but, on the contrary, establishes the fact that such amounts constitute moneys of the United States. Furthermore no provision was made in the Shipping Act of 1916 or Merchant Marine Acts of 1920 and 1928 which would authorize the deposit of Government moneys except as provided by law. Section 3617, Revised Statutes.

It is proposed, therefore, that all domestic collections, other than special deposits, for each fiscal year be deposited into the Treasury to the credit of specified receipt accounts, which may be designated "United States Shipping Board Operating Receipts" and "United States Shipping Board Sales Receipts." Operating receipts so covered in would be placed to the credit of the appropriation "O-551 United States Shipping Board Fund." Sales receipts so covered in would be placed to the credit of two funds—"Liquidation Fund" from which expenses of liquidation may be paid within limitations of the appropriation act and "O8557 Construction Loan Fund, United States Shipping Board." Special deposit collections would be deposited in the disbursings officer's official checking account with the Treasury. All disbursements would be made by disbursing officer's checks drawn on the Treasurer of the United States against advances made them on accountable warrant.

It is requested that the matter be given consideration and this office advised as to the views of the Board.

Respectfully,

(Signed) J. R. McCarl,
Comptroller General of the United States.

UNITED STATES SHIPPING BOARD

August 19, 1931.

The Honorable
The Comptroller General of the United States,
Washington, D. C.

Sir:

Acknowledgement is made of your letter of the 16th ultimo with reference to the deposit of monies by the Merchant Fleet Corporation in banks in the United States, which monies were derived from the operations of vessels, good

faith deposits, receipts from sales, and miscellaneous collections.

It is noticed that you maintain that all monies derived from the business operations of the Merchant Fleet Corporation cannot be handled or deposited except as provided by Section 3617 of the Revised Statutes, and the inference to be drawn from your letter is that all monies not so handled are not handled in accordance with the law. It is also noticed that you suggest that all *domestic* collections other than special deposits be deposited into the Treasury of the United States to the credit of specified receipt accounts designated by different names and that these accounts would then be subject to check of the Disbursing Officers.

It is the position of the United States Shipping Board and the Merchant Fleet Corporation that the method of handling all monies received from the operation of merchant vessels and trade routes, from the liquidation of the war-time program, and from every other source have been at all times strictly in accordance with the statutory authority conferred by Congress, and that the procedure of the Merchant Fleet Corporation questioned by you in your letter is not only entirely in accordance with the present law but is consistent with good business and commercial practice and works to the greatest benefit of the United States Treasury.

A reading of Section 3617 of the Revised Statutes referred to by you clearly discloses that that Section has no application to the great bulk of the monies to which you refer and it is submitted that wherever that Section has had application to any of the monies received by the Merchant Fleet Corporation or the Shipping Board it has been strictly complied with.

As to all War Emergency Legislation, the Comptroller of the Treasury on December 12, 1919, rendered an opinion that neither the working capital of the Fleet Corporation nor monies turned over to it from the Emergency Shipping Fund, nor the net proceeds derived from its activities were monies of the United States which were required to be deposited in the Treasury or in a designated depository as public monies.

Nothing has been found in any of the Appropriation Acts passed subsequent to June 5, 1920, or in the Merchant Marine Acts of 1920 or 1928 which shows that Congress

intended that monies to be derived from the operation of ships, from the sale of property, or from other sources should be treated as monies of the United States covered by Section 3617 of the Revised Statutes. In fact a study of those Appropriation Acts clearly shows that Congress had no such intention.

The Merchant Marine Act of 1920, which was practically a revision of all previous laws on the subject of the Merchant Marine and which was really the charter upon which the Shipping Board and the Fleet Corporation have acted since 1920, places the responsibility for the operation of the ships, the establishment of trade routes, the sale of the ships, trade routes and other property, the establishment of an insurance fund, and of a construction loan fund out of "net revenues from operations and sales" and "revenue from sales and operations" respectively, upon the United States Shipping Board. The Fleet Corporation was continued in existence and was given authority to act as the agent of the United States Shipping Board until all vessels should be sold.

Section 14 of the Merchant Marine Act 1920 should be read in connection with the Appropriation Act which was passed on the same date as that Act, namely June 5, 1920, and in connection with all subsequent Appropriation Acts. Section 14 is as follows:

> "Sec. 14. That the net proceeds derived by the board prior to July 1, 1921, from any activities authorized by this Act, or by the 'Shipping Act, 1916', or by the Acts specified in section 2 of this Act, except such an amount as the board shall deem necessary to withhold as operating capital, for the purposes of section 12 hereof, and for the insurance fund authorized in section 10 hereof, and for the construction loan fund authorized in section 11 hereof, shall be covered into the Treasury of the United States to the credit of the board and may be expended by it, within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels. After July 1, 1921, such net proceeds, less such an amount as may be authorized annually by Congress to be withheld as operating capital, and less such sums as may be needed for such insurance and construction loan funds, shall be covered into the Treasury of the

United States as miscellaneous receipts. The board shall, as rapidly as it deems advisable, withdraw investment of Government funds made during the emergency under the authority conferred by the Acts or parts of Acts repealed by section 2 of this Act and cover the net proceeds thereof into the Treasury of the United States as miscellaneous receipts."

It will be noticed that this Section refers to "net" proceeds and that only those proceeds not required for the particular purposes mentioned in the Section should be covered into the Treasury of the United States.

Section 3617, to which you have referred, applies to gross revenues and not to net.

The Appropriation Act of June 5, 1920, contains the following:

"The expenses of the United States Shipping Board Emergency Fleet Corporation, during the fiscal year ending June 30, 1921, for administrative purposes, the payment of claims arising from the cancellation of contracts, damage charges and miscellaneous adjustments, maintenance and operation of vessels, and the completion of vessels now under construction, shall be paid from the following sources: (a) The amount on hand July 1, 1920; (b) The amount received during the fiscal year 1921 from the operation of ships; (c) not to exceed $15,000,000 from deferred payments on ships sold prior to the approval of this Act; (d) not to exceed $25,000,000 from plant and material sold during the fiscal year 1921; and (e) not to exceed $30,000,000 from ships sold during the fiscal year 1921."

It is perfectly apparent from Section 14 above quoted and the Appropriation Act passed June 5, 1920, that the Shipping Board was authorized to withhold such amount as it should deem necessary as operating capital for the purposes mentioned in the Merchant Marine Act, and that it was authorized to expend, and consequently keep in its possession, the amount received during the fiscal year from the operation of the ships.

The Appropriation Acts which followed that mentioned above are all very similar down to the year 1928. In the

Appropriation Act for the year ending June 30, 1929, approved May 16, 1928, the following provision appears:

> "(e) All interest earned on the funds, excepting the construction loan fund, of the United States Shipping Board Merchant Fleet Corporation is to accrue to these funds and is made available for the purposes hereinbefore set forth subject to the limitations herein established."

This is a clear indication that Congress was fully cognizant of the practice of the Merchant Fleet Corporation to retain in its possession for the purpose of expeditious payment of bills the funds derived by it from its various sources, and authorized it not only to follow this practice and so retain the funds but also authorized it to retain the interest earned by these funds while so retained.

A study of the decisions of the Supreme Court of the United States discloses that that Tribunal has maintained that the Fleet Corporation is a separate and distinct entity and although it handles money and property of the United States is not subject to the same laws, rules and regulations with regard to those monies and properties as govern monies of the other departments and independent branches of the Government. These decisions have already been called to your attention and it seems unnecessary to go into them extensively again. Sloan Shipyards v. U. S. S. S. E. F. C. 258 U. S. 549. Skinner & Eddy v. McCarl, 275 U. S. 1. U. S. S. B. M. F. C. v. P. Leroy Harwood, Trustee, 281 U. S. 519.

For your convenience, however, I quote from the opinion in the McCarl case Supra, the following excerpt:

> "At no time, during the War, or since its close, have the financial transactions of the Fleet Corporation passed through the hands of the General Accounting Offices of the Government, or been passed upon, as accounts of the United States, either by the Comptroller of the Treasury or the Comptroller General. The accounts of the Fleet Corporation, like those of each of the other corporations named, and like those of the Director General of Railroads during Federal Control, have been audited, and the control over their financial transactions has been exercised, in accordance with

commercial practice, by the Board or the officer charged with the responsibilities of administration. Indeed, an important if not the chief reason for employing these incorporated agencies was to enable them to employ commercial methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States."

Mr. Justice Brandeis, who delivered the above opinion cited a number of the Appropriation Acts and included not only those passed during the War but also those passed up to March 3, 1925.

Every effort has been made to work in harmony with the Treasury Department and to draw funds from the Treasury Department only when needed and to use so far as possible the Treasury Department as a depository. It is submitted that to follow out the suggestion contained in your letter would accomplish no result other than to greatly delay the handling of the business by the Fleet Corporation and increase the work of the Treasury Department by placing upon that Department the work now performed by banks.

It is noticed that even you make a distinction between the funds collected in the United States and those collected abroad and your suggestion as to the handling of the funds only applies to those collected in the United States. You thereby admit that Section 3617 of the Revised Statutes really has no application to the funds in question and you also admit that the funds collected in foreign countries could not be handled as you suggest. The same reason for not handling the foreign funds as you suggest applies to the domestic funds with equal force.

As a matter of information, it may be stated that whereas on June 30, 1928, the Merchant Fleet Corporation maintained 172 bank accounts in the total sum of $13,087,238.94, on June 30, 1931, the number had been reduced to 43 accounts of a total of $3,649,694.81, thereby showing a reduction of 129 bank accounts, and a decrease in balances maintained of $9,437,544.13.

Respectfully,

T. V. O'Connor,
Chairman.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, February 8, 1932.

UNITED STATES SHIPPING BOARD.

SIRS: There has been received your letter of August 19, 1931, in reply to office letter dated June 16, 1931, relative to the practice of depositing public moneys in banks by the Merchant Fleet Corporation.

Since receipt of your letter copies of resolutions adopted by the Board on November 4 and 11 and December 9, 1931, have been received. Resolution adopted November 4, 1931, provides:

> WHEREAS, monies of the United States have been deposited in divers banking institutions by the Merchant Fleet Corporation; and
>
> WHEREAS, it is provided under Title 12, Section 90, of the Compiled Statutes, that the Secretary of the Treasury shall require all national banking institutions who are acting as financial agents of the Government to give satisfactory security by the deposit of United States Bonds and otherwise for the safekeeping and prompt payment of the public money deposited with them; and
>
> WHEREAS, it is the desire of the United States Shipping Board to follow the plan thus outlined by Act of Congress;
>
> RESOLVED, that all banks and banking institutions which have or shall have monies of the United States in the name of the United States Shipping Board Merchant Fleet Corporation be and they are hereby required as a condition of the said deposit to give satisfactory security to said Merchant Fleet Corporation by the deposit of United States Bonds and otherwise for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as depositaries of such monies.
>
> FURTHER RESOLVED, that the Treasurer of the United States Shipping Board Merchant Fleet Corporation be and he is hereby authorized and required to address to each one of the said banks and banking institutions now having such monies on deposit, a

letter in the form hereto attached enclosing a form of deposit agreement, and as a condition for the continuance of said deposit the said Treasurer of the said Merchant Fleet Corporation is authorized and directed to require the signing of an agreement in the form attached hereto, and the deposit by such depositary of United States Bonds in adequate amounts as collateral for the repayment of the amount of each deposit in each bank and banking institution, respectively.

It thus appears to be admitted by resolution of the Board that all moneys deposited in banks in the name of the United States Shipping Board Merchant Fleet Corporation are moneys of the United States, which is in accord with letter of June 16, 1931, A-7515.

Section 14 of the Merchant Marine Act, 1920, 41 Stat. 988, provides:

> That the *net* proceeds derived by the board prior to July 1, 1921, from any activities authorized by this Act, or by the "Shipping Act, 1916," or by the Acts specified in section 2 of this Act, except such an amount as *the board shall deem necessary to withhold as operating capital*, for the purposes of section 12 hereof, and for the insurance fund authorized in section 10 hereof, and for the construction loan fund authorized in section 11 hereof, shall be covered into the Treasury of the United States to the credit of the board and may be expended by it, within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels. After July 1, 1921, such net proceeds, *less such an amount as may be authorized annually by Congress to be withheld as operating capital*, and less such sums as may be needed for such insurance and construction loan funds, shall be covered into the Treasury of the United States as miscellaneous receipts. The board shall, as rapidly as it deems advisable, withdraw investment of Government funds made during the emergency under the authority conferred by the Acts or parts of Acts repealed by section 2 of this Act and cover the net proceeds thereof into the Treasury of the United States as miscellaneous receipts.

The provision as to receipts subsequent to July 1, 1921, "less such amount as may be authorized annually by Congress to be withheld as operating capital," is not considered as granting authority to deposit such moneys in banks, but merely for the withholding of certain funds from deposit into the Treasury of the United States as "miscellaneous receipts."

The following provisions of law are pertinent in connection with the points raised in your letter:

> The gross amount of all moneys received from whatever source to the use of the United States, except as otherwise provided, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post Office Department" (Section 3617, Revised Statutes).
>
> The Secretary of the Treasury may designate such depositaries of public moneys in foreign countries and in the territories and insular possessions of the United States as may be necessary for the transaction of the Government's business, under such terms and conditions as to security and otherwise as he may from time to time prescribe: Provided, That in designating such depositaries American financial institutions shall be given preference wherever, in the judgment of the Secretary of the Treasury, such institution is safe and able to render the service required" (42 Stat. 692).
>
> All collectors and receivers of public money of every description, within the District of Columbia, shall, as often as they may be directed by the Secretary of the Treasury or the Postmaster General so to do, pay over to the Treasurer of the United States, at the Treasury, all public moneys collected by them or in their hands * * *. It shall be the duty of the Secretary and Postmaster General, respectively, to direct such payments by the collectors and receivers * * * at least as often as once in each week, and as much oftener as they may think proper (Section 3615, Revised Statutes).
>
> Every person who shall have moneys of the United States in his hands or possession, and disbursing of-

ficers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, or some public depositary of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer or the public depositary shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: Provided, That postal revenues and debts due to the Post Office Department shall be paid into the Treasury in the manner required by law. (Section 3621, Revised Statutes; 29 Stat. 179; 41 Stat. 654-655.)

Title 12, section 90, of the Compiled Statutes, referred to in the resolution, *supra*, has reference to the powers of the Secretary of the Treasury in the designation of national banking institutions as public depositaries, and does not confer on any other branch or establishment of the Government any powers as to designation and amount or class of security to be required of depositaries.

The court decisions cited in your letter, *Sloan Shipyards* v. *U. S. S. B. E. F. C.*, 258 U. S. 549, *Skinner & Eddy* v. *McCarl*, 275 U. S. 1, and *U. S. S. B. M. C.* v. *Leroy Harwood, Trustee*, 281 U. S. 519, hold in substance that the Merchant Fleet Corporation is a separate entity, bound by and subject to suit in connection with its corporate acts.

The provisions contained in the current and certain prior appropriation acts covering the availability of interest earned on funds of the Merchant Fleet Corporation and its accrual to these funds is not construed as authorizing such funds to be kept in the possession of the corporation and invested or deposited in banks not officially designated depositaries of the United States, in violation of the specific acts above quoted. Such provisions appropriate the interest which has accrued on bank deposits already made under the irregular practice; for the purposes mentioned in said appropriation acts, and may not be said to sanction or authorize the continuance of such practice.

The resolution adopted by the Board on December 9, 1931, approves a certain deposit agreement between the Merchant Fleet Corporation and the Commercial National Bank, Washington, D. C., accepting as security for the deposit balance notes secured by deeds of trust on real

property in the District of Columbia. Inasmuch as it is admitted that the funds in the hands of the Merchant Fleet Corporation are public moneys, it is held that the general statutes applicable to the safeguarding of such public moneys are applicable in the absence of specific legislation to the contrary. Expenses of the Fleet Corporation are now being paid by Treasury checks in Washington, and there appears no necessity for maintenance of the account with the Commercial National Bank.

Whether or not compliance with statutory law will increase or diminish the burdens of a department or establishment of the Government is a matter for submission to the Congress for its consideration.

It is therefore requested that the matter be given further consideration and this office advised as to the action taken.

Respectfully,

(signed) J. R. McCarl,
Comptroller General of the United States.

UNITED STATES SHIPPING BOARD

February 29, 1932.

The Honorable
The Comptroller General of the United States,
Washington, D. C.

Sir:

Receipt is acknowledged of your letter of the 8th instant, relating to bank deposits maintained by the Merchant Fleet Corporation.

Discussion of the legal right of the Merchant Fleet Corporation to maintain bank accounts has been continued for several years and although the Shipping Board has made earnest efforts to answer the questions you have raised from time to time, in reports to the Congress, and in letters you have addressed to the Board, we appear to have made little or no progress in satisfying you of our right to carry in banks a part of the funds of the Merchant Fleet Corporation. The point at issue, therefore, appears to be one on which there is a substantial difference of opinion between us and in connection with which little may be gained by continuing an interchange of views, which of necessity, must always be based on the same fundamental facts.

While we feel that little may be accomplished by repeating the arguments previously presented in our letter of December 12, 1930, addressed to the Speaker of the House of Representatives in reply to your report to the Congress, dated September 30, 1929, and also in our letter to you of August 19, 1931, replying to yours of June 16, 1931, we desire at this time to discuss several points which you have raised in your letter of February 8, 1932.

You quote a resolution adopted by the Shipping Board on November 4, 1931, and make the following statement:

> "It thus appears to be admitted by resolution of the Board that all moneys deposited in banks in the name of the United States Shipping Board Merchant Fleet Corporation are moneys of the United States * * *"

By reason of the fact that complete ownership of the capital stock of the Merchant Fleet Corporation rests in the United States, it is apparent that in the final analysis, funds of the Corporation are moneys of the United States, and this fact the Shipping Board has never denied. We do believe, however, and in this belief are supported by decision of the Comptroller of the Treasury of the United States of December 12, 1919, which has previously been brought to your attention, that moneys of the Merchant Fleet Corporation are *not* moneys of the United States which are required to be deposited in the Treasury or in a designated depository as public moneys.

In adopting its resolution of November 4, 1931, the Shipping Board had in mind the desirability of obtaining security for its various bank deposits during the present period of economic disturbance. Since a tried and proved system of collateral deposits for bank accounts had been developed by the United States Treasury, pursuant to Title 12, section 90 of the Compiled Statutes, the Shipping Board decided to follow the same system, and accordingly adopted its resolution of November 4, 1931, the third clause of which indicates such intention, as follows:

> "Whereas, it is the desire of the United States Shipping Board to follow the plan thus outlined by Act of Congress."

It will be noted that the word "desire" is used in this resolution, indicating that the Board was prompted by

desire and not by a belief that it was required to comply with said statute.

On page 3 of your letter of February 8, 1932, you refer to section 14 of the Merchant Marine Act, 1920, and state the following:

> "The provision as to receipts subsequent to July 1, 1921, 'less such amount as may be authorized annually by Congress to be withheld as operating capital', is not considered as granting authority to deposit such money in banks, but merely for withholding of certain funds from deposit with the Treasury of the United States as 'miscellaneous receipts' ".

In this statement, we cannot concur, because it is our opinion that this act in authorizing retention of "operating capital" by the Merchant Fleet Corporation, contemplated that operating capital would be used by this Corporation in the same way as it would be used by a private corporation, and without the usual restrictions imposed on the handling of public moneys of the United States. It is our belief that Congress in adopting the Shipping Act, 1916, which authorizes the creation of one or more corporations to act as agents of the Shipping Board, intended thus to grant more freedom of action than is usually enjoyed by a government department or establishment and we consider that this belief was confirmed by Congress when it authorized in the 1920 Act the retention of "operating capital" for the use of the Corporation. Since a corporation commonly avails itself of banking facilities in carrying out the purpose for which it is created, we feel that the Merchant Fleet Corporation is fully justified in doing likewise, even without specific statutory authority so to do.

The statutes quoted on pages 3 and 4 of your letter of February 8, 1932, have been given careful consideration, but we do not believe them to be applicable to funds of the Merchant Fleet Corporation for reasons which have been fully covered in previous correspondence and which depend upon our belief that this Corporation is not bound by the regular governmental regulations for handling funds. In this belief, we are supported by decision of the Supreme Court in the case of Skinner & Eddy v. McCarl, 275 U. S. 1, which has previously been called to your attention, but which is again quoted in part as follows:

"Indeed, an important if not the chief reason for employing these incorporated agencies was to enable them to employ commercial methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States."

Your statement on page 4 to the effect that Title 12, section 90 of the Compiled Statutes confers powers to the Secretary of the Treasury in the matter of obtaining collateral for deposits in public depositories but does not confer similar powers to other branches or establishments of the government, is noted. We believe, however, that the Shipping Board, while not bound by the requirements of this statute in its decisions in matters concerning funds of the Merchant Fleet Corporation, can hardly be criticized for voluntarily following a procedure established by the Treasury and found by experience to provide satisfactory safeguards for funds deposited in banks.

You further state that the provisions of various appropriation acts which make available for the use of the Merchant Fleet Corporation the interest that accrues on balances in banks "may not be said to sanction or authorize the continuance of such practice" (maintaining deposit in banks). This interpretation is undoubtedly true from a technical viewpoint, but we submit that Congress has, at numerous hearings, been fully informed of the bank accounts maintained by the Corporation and there have been present at these hearings, some of the Members of Congress who were active in the drafting and enactment of the Shipping Act, 1916, and the Merchant Marine Acts of 1920 and 1928. If the maintenance of bank accounts were a practice contrary to the intentions of Congress in the passage of these several shipping acts, we believe that one or more of the Members of Congress present at such hearings, would have called this fact to our attention, but this has not been done. We are encouraged, therefore, in our belief that Congress intended to grant the Merchant Fleet Corporation a certain freedom of action, including authority to use commercial banking facilities if it found such practice to be necessary or desirable.

On page 5, you refer to the deposit in the Commercial National Bank, Washington, D. C., and conclude that there

appears no necessity for the maintenance of this account. This account has been in existence for approximately 10 years, during which the Merchant Fleet Corporation has made full use of the bank's services for collection of checks, notes, letters of credit and other negotiable paper, which might have been handled through the United States Treasury but which we believe have been more expeditiously and economically handled through the Commercial National Bank. The combined facilities of the United States Treasury and the Federal Reserve System are extensive, but collections such as those made through the Commercial National Bank are not the ordinary business of the United States Treasury and, therefore, would be the cause of trouble and expense to the Treasury and delay to the Merchant Fleet Corporation in collecting the money represented by such paper. The Shipping Board is of the opinion, therefore, that it was justified in establishing the account and in continuing to maintain it.

You also offer objections to the nature of the collateral furnished by the Commercial National Bank to secure this account. As previously stated, the Shipping Board does not consider itself bound by the requirements of Title 12, section 90 of the Compiled Statutes, and for this reason believes it was fully justified in accepting as collateral for this deposit, a different form of security than that specified by Circular No. 176, issued by the Treasury Department pursuant to said statute. For reasons which the Shipping Board considered sufficient, the Commercial National Bank was not willing to furnish government bonds as collateral, so the Board accepted deeds of trust on real property in the District of Columbia, including the land and building on and in which the bank in question is located. The appraised value of the security which was furnished, far exceeds the average balance of the bank account, so the deposit is believed to be properly safeguarded.

We note that your report to Congress, dated January 8, 1932, contains a reference to the bank deposits maintained by the Merchant Fleet Corporation, and states your opinion that these deposits are unauthorized and that the moneys therein should be deposited in the United States Treasury. This condition was similarly set forth in your report to Congress, dated September 30, 1929, and it occurs to the Shipping Board that if Congress concurs in your views and considers that the maintenance of bank accounts is contrary

to law or is undesirable, it will not hesitate to instruct the Shipping Board accordingly.

As rapidly as consistent with the reducing activities of the Merchant Fleet Corporation, the balances in banks and the number of bank accounts are being reduced. Following this policy, large reductions have been made, as is clearly indicated by a comparison of the total of approximately $8,000,000 deposited in banks June 30, 1930, with the corresponding total of $1,621,000 on January 31, 1932.

Respectfully,

(signed) T. V. O'Connor,
Chairman.

PART I.

Philippine Acts.

Act No. 1792 Phil. Comm., Oct, 12, 1907

"The Secretary of War may designate banking institutions in the United States as depositaries of the Government of the Philippine Islands, after they have filed in the Bureau of Insular Affairs of the War Department, Washington, District of Columbia, sufficient evidence of their sound financial condition and deposited bonds of the United States or of the Government of the Philippine Islands or other security satisfactory to the Secretary of War in such amounts as may be designated by him; and no banking institution shall be designated a depositary of the Government of the Philippine Islands until the foregoing conditions have been complied with." Public Laws of the Phil. Is., Vol. VI, pp. 475, 482-483.

Philippine Administrative Code of 1916, Section 656

"The Governor-General may appoint any bank or banking institution in the Philippine Islands, and the Secretary of War any similar institution in the United States, as a depositary of the Government of the Philippine Islands, after such institution has filed sufficient evidence of its sound financial condition and has deposited, as security, either in the Insular Treasury or in the Bureau of Insular

Affairs at Washington, bonds of the United States or of the Government of the Philippine Islands or other bonds or securities satisfactory to and approved by the officer making the appointment and in such amount as shall be required by him (1792-38).

Autonomy Act of Congress—Philippine Islands

"The laws in force in the Philippines on August 29, 1916, shall continue in force and effect, except as altered, amended, or modified by this chapter; until altered, amended, or repealed by the legislative authority provided by this chapter or by Act of Congress of the United States." 39 Stat. 547, 48 U. S. C., Sec. 1004.